

DISABILITY RETIREMENT OR INDUSTRIAL DISABILITY RETIREMENT

You should maintain a supply of “A Guide To... Completing Your CalPERS Disability Retirement Election Application ([PERS-PUB-35](#))”, which includes the disability application, forms to be completed with step by step instructions and important information regarding disability and/or industrial retirement. You should familiarize yourselves with the information in the publication to provide assistance to your employees.

GENERAL INFORMATION AND REQUIREMENTS

As soon as it is believed the member is unable to perform the job because of an illness or injury, which is expected to be permanent, or last longer than six months, the member or someone on the member's behalf, should submit an application for disability retirement. The medical condition does not have to be “permanent and stationary” under Workers' Compensation to submit the application.

CalPERS can expedite retirement processing for members who are facing a terminal illness. If this is the case, CalPERS should be contacted immediately to discuss an emergency retirement. We will make every effort possible to quickly obtain the necessary information and complete our processing. (However, for any post-retirement death benefits to be paid, the member must be living on the effective date of retirement.)

Retirement for *disability*, available to all members (miscellaneous and safety classification) credited with five or more years of service, is retirement resulting from mental or physical incapacity for the performance of duty. The injury or disease causing the incapacity need not be job-related.

NOTE: A member who is **employed on a part-time basis** and has worked at least five years for first-tier or ten years for second-tier may be eligible to retire with less than five or ten years of credited service. (It takes 10 months of full time employment or 1,720 hours to equal one year of CalPERS service credit.) The retirement benefit the member will receive will be based on their actual service credit amount.

Retirement for *industrial disability*, available to all safety members and those miscellaneous members covered under Government Code Section 21151, is retirement resulting from mental or physical incapacity for the performance of duties. The disabling injury or disease must be work incurred or job-related. *State Industrial* members must show they were violently attacked by an inmate or parolee of the Department of Corrections, the Youth Authority, or a forensic facility of the Department of Mental Health that resulted in their disability. Age, service, and contributions are not considered for qualifying purposes.

Application for disability, or industrial disability, retirement may be made by the member, by a **duly authorized official** of the employing agency, or any person on behalf of the member.

“Duly authorized official” referred to above, is defined in Government Code Section 21152(a)(b)(d).

The application for disability retirement shall be made only (1) while a member is in state service, or (2) for a member, whose contributions will be made under Government Code Section 20997, and is absent on military service, or (3) within four months after the discontinuance of the state service of the member, or while on an approved leave of absence, or (4) while the member is physically or mentally incapacitated to perform his duties from the date of discontinuance of state service to the time of application or motion.

The disability decision is based upon competent medical opinion and all medical, vocational, and information provided by the member, employer and workers' compensation carrier. All this information is considered in the determination. The determination is based on actual/present disability, not prospective inability to perform the job duties.

Generally, the disability determination can be made within three months (after CalPERS receives all the required information).

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SB 1073 became law effective January 1, 2000. This requires the employer to pay the employee an Interim Disability Allowance (IDA), or also known as Temporary Disability Allowance (TDA), provided **all** of the following conditions have been met:

- The employee has exhausted his/her leave credits; and
- The employee is placed on involuntary leave status; and
- The employer is applying for disability or industrial disability retirement on the employee's behalf

To determine the amount of the IDA, submit a "Retirement Allowance Estimate Request" (PERS-BSD-1-F) to the CalPERS Member Services Division. The request form must include the last day on pay status. Please refer to the sample PERS-BSD-1-F (next page).

If the disability is approved, CalPERS will reimburse the employer the amount of IDA that was paid to the member from the retroactive portion of the retirement allowance. If the amount of IDA exceeds the retroactive amount, the employer will be reimbursed from the member's monthly retirement allowance at the rate of 10% until the reimbursement is satisfied.

If the disability is denied, the employer is responsible for paying the member the difference between the IDA and his/her salary. The member also receives leave credits for the time he/she was on IDA.

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Miscellaneous members submit applications for disability retirement on The Disability Retirement Election Application ([PERS-BSD-369-D](#)). The form is included in the brochure “A Guide To...Completing Your CalPERS Disability Retirement Election Application”([PERS-PUB-35](#)).

A Medical Report Form ([PERS-BSD-1372](#)) to be completed by the member’s personal physician, and an Authorization for Release of Medical Information ([PERS-BSD-35](#)) to be completed and returned by the member are also included. In the event that the medical information supplied to CalPERS is inadequate, CalPERS may arrange an independent medical examination.

At the same time the member will provide the employer with a PERS-BSD-64 requesting a copy of the member’s job description and a [PERS-BSD-194](#) requesting advance payroll information. Submission of the job description should not be delayed for completion of the [BSD-194](#). Employers should return the [BSD-194](#) as soon as information is available.

In order for CalPERS to process a request for disability retirement, we must receive:

- A completed *Disability Retirement Election Application* ([PERS-BSD-369-D](#));
- The completed authorization to release medical and employment information to CalPERS ([PERS-BSD-35](#))
- Medical reports ([PERS-BSD-1372](#)) from the member’s doctor and other medical practitioners with a diagnosis of the disabling condition (including information about how it prevents the member from performing his/her job duties);
- A description of the member’s job duties from the employer attached to the PERS-BSD-64; and
- Workers’ Compensation information ([PERS-BAS-92](#)).

All the forms needed are included in the **Retirement Forms** section of the “A Guide To...Completing Your CalPERS Disability Retirement Election Application” ([PERS-PUB-35](#)). Be sure to use the **Step-By-Step Guide**, the **Required Documents Checklist**, and the **Where To Send Forms** section when completing the application, so that CalPERS receives complete, accurate information. This will ensure the request for disability retirement is completed in a timely manner.

CANCELLATION OF DISABILITY RETIREMENT APPLICATION

If a member desires to cancel the disability retirement application, the request MUST BE made in writing to be valid. The member’s signature is required. A cancellation is binding; the member must thereafter re-apply whenever he/she is ready to retire. Only an employer can cancel an *Employer Originated Application*.

FIGURING THE DISABILITY ALLOWANCE

You can get an idea of what the member’s monthly unmodified disability retirement allowance will be. To do so, you need to know three things:

- how many years of service credit the member has;
- the benefit factor (1.8 percent for State First-Tier, 1.125 percent for State Second-Tier, or 1.35 percent for the local 1.5 percent at 65 formula); and
- the final compensation – based on the highest consecutive 12 months of salary (usually the last 12 months of employment).

Find the benefit factor and years of service credit in the following groupings. Then follow the instructions using the worksheet at the bottom of the next page.

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STATE FIRST-TIER

A State First-Tier member must have **at least five years** of service credit to be eligible for disability retirement.

If the member has between **five and 10 years, OR 18½ or more years** service credit, multiply the years of service by **1.8%** to determine the percentage of final compensation.

If the member has between **10 and 18½ years** of service credit, **add** to that figure the number of years until the member will be age 60 and multiply the **TOTAL** by **1.8%** to determine the percentage of final compensation. (The maximum percentage allowable is 33 1/3%.)

THEN

Multiply the percentage of final compensation by the highest consecutive **12-month** average monthly salary to find the Unmodified Allowance. (If the member is eligible for service retirement, the member will receive the higher allowance payable, service or disability.)

Figuring the Disability Allowance Worksheet

Years of Service	Benefit Factor	%	%	
_____	X	_____	% =	_____ %
% of Final Compensation		Final Compensation		Retirement Allowance
_____ %	X \$	_____	= \$	_____

STATE SECOND-TIER

A State Second-Tier member must have **at least ten years** of service credit to be eligible for disability retirement.

If the member has between **10 and 29.629½ years** of service credit, **add** to that figure the number of years until the member will be age 65 and multiply the **TOTAL** by **1.125%** to determine the percentage of final compensation. (The maximum percentage allowable is 33 1/3%.)

If the member has **29.629** years or more of service credit, multiply the years of service by **1.125%** to determine the percentage of final compensation.

THEN

Multiply the percentage of final compensation by the highest consecutive **12-month** average monthly salary to find the Unmodified Allowance. (If the member is eligible for service retirement, the member will receive the higher allowance payable, service or disability.)

Figuring the Disability Allowance Worksheet

Years of Service	Benefit Factor	%	%	
_____	X	_____	% =	_____ %
% of Final Compensation		Final Compensation		Retirement Allowance
_____ %	X \$	_____	= \$	_____

MEMBER ALTERNATIVES FOLLOWING DISABILITY DETERMINATION

When the member has been found to be “disabled”, the member will be notified of the finding and advised that he must be retired “forthwith”. *The member cannot cancel the application for disability retirement after disability has been determined.* However:

1. If the member is also eligible and applies to retire for service (prior to the effective date of retirement for disability or within 30 days of notification of disability approval), the member may be retired for service.
2. The member may also elect to separate from employment and accept a refund of accumulated contributions in lieu of all future rights and benefits under this System.
3. The member may appeal the determination directly to CalPERS.

When the member has been found to be “not disabled” and the application is denied, the member will be notified of the finding and provided the opportunity to appeal the decision.

CalPERS is subject to the Administrative Procedures Act (APA). So, in case of an appeal to the determination, the dispute must be heard by an administrative law judge of the State Office of Administrative Hearings.

The APA is set forth in the Government Code and the statutes describe the requirements and methods for conducting an administrative hearing.

INSTRUCTIONS FOR COMPLETION – PERS -BSD-194

Upon approval of an application for disability retirement by the System, the Benefit Services Division will require payroll information to begin the disability retirement payments.

The Report of Separation and Advance Payroll Information, [PERS-BSD-194](#), must be completed by the employer (see copy on following pages). The following is to be completed by the member:

1. Member's name
2. Social Security number
3. Retirement date requested by the applicant
4. Employer name, agency and unit codes

The following is to be completed by the employer:

Part 1

1. Separation date
2. Last day on pay status
3. Beginning and ending dates and type of leave of absence with compensation

NOTE: If a member retires on the day following the last day on the payroll, then the date of separation and the last day on the payroll will be the same date.

If a member goes on leave of absence or is absent without leave, etc., at the time of retirement, then the date of separation and the last day on the payroll may not be the same.

Part 2

1. Inclusive dates of pay periods (monthly, semi-monthly, bi-weekly, or quadri-weekly) for the month of separation and each of the three months preceding separation.
2. Amount of full-time pay rate
3. Time worked in each pay period
 - a. month
 - b. days
 - c. hours

It may be necessary for the employer to estimate the last month's payroll information so that CalPERS may receive the payroll form thirty days in advance of the member's retirement.

4. Amount earned in each pay period
5. Amount of normal retirement contributions for each pay period
6. Amount of other than normal contributions
7. Under "Specify" column heading, explain the other than normal contributions.

NOTE:

1. Do not combine contributions for maintenance and Special Compensation with normal contributions. Use the "other" column.
2. Do not deduct retirement contributions from lump sum vacation payments.
3. Do not delay submission of this form awaiting final payroll data. Estimate the last period's payroll information and label this line "Estimate".

Part 3

If the member has a sick leave balance that was not used at the time of separation from employment, report the total number of days of unused sick leave.

Part 4

Authorized officer (Accounting/Payroll) signs name, title, date, and telephone number. Immediately forward the original copy of the Form [PERS-BSD-194](#) to the Benefit Application Services Division. Nonreceipt of the form by the Benefit Application Services Division on a timely basis may result in a delayed warrant to the recipient.

EMPLOYMENT OF A RETIREE

General Rule

Government Code section 21220 provides that a retired person receiving a monthly allowance from this System shall not, except as otherwise provided, be employed in any capacity thereafter by a CalPERS employer unless he/she has first been reinstated from retirement. **Any person employed in violation of this Section shall be reinstated to CalPERS membership as of the date the unlawful employment occurred.** The person will be required to:

1. Reimburse CalPERS for any retirement allowance received during the period of employment in violation.
2. Pay CalPERS employee contributions that should have been paid during the period of unlawful employment, plus interest.
3. Pay toward reimbursement to CalPERS for administrative expenses incurred in handling the situation.

The employer who employs a retired person in violation of the law will be required to:

1. Pay CalPERS employer contributions, which should have been paid during the period of unlawful employment, plus interest.
2. Pay toward reimbursement to CalPERS for administrative expenses incurred in handling the situation.

Exceptions To General Rule

NOTE: Under the following provisions reinstatement from retirement is not required (except as noted), and no employee or employer contributions should be made to CalPERS. It is the employer's responsibility to monitor the employment as to whether reinstatement is required

1. Temporary Employment - All Employers*

Any retired person may be employed by the appointing power of a state agency, or any other employer of this System, for a period not exceeding 960 hours in any calendar year for all employers; either during an emergency to prevent stoppage of public business or because the retired employee has skills needed in performing work of limited duration. The rate of pay for persons employed under this Section may not be less than the minimum, nor exceed that paid by the employer to other employees performing comparable duties (Government Code section 21224).

2. Juror or Election Officer*

Any retired person may serve as a juror or election officer and receive fees for such service (Government Code section 21221(c)).

3. School Crossing Guards*

Any retired person may be employed as a school crossing guard (Government Code section 21221(b)).

4. Temporary and Substitute Employment by State Agencies*

a) Upon approval of the State Board of Control, a state agency may employ a retired person previously employed by that agency, where by reason of actual or potential litigation, or a proceeding before the State Board of Control, the services of such person are or may be necessary in preparing for trial or in testifying as to matters within or based upon his knowledge acquired while employed. The retired person may be paid a per diem and travel expenses not to exceed the rate paid other persons by state agencies for similar services. The per diem is then reduced by the retirement allowance paid to the retired person for the days of employment (Government Code section 21223).

EMPLOYMENT OF A RETIREE

- b) A retired person may be employed as a substitute in a position requiring certification qualifications pursuant to section 59007 or 59113 of the Education Code, at the California School for the Deaf or the California School for the Blind. The total of all such service shall not exceed 960 hours in any fiscal year (Government Code section 21225).

5. Staff of Schools, Colleges or University of California*

- a) A retired person may be employed as a member of the academic staff of California Community Colleges, or of the University of California not to exceed 960 hours in any fiscal year (Government Code section 21226);
- b) A retired person may be employed, in any fiscal year, as a member of the academic staff of a California State University not to exceed 960 hours or 50 percent of the hours the member was employed during the last fiscal year of service prior to retirement (Government Code section 21227);
- c) A retired person may be employed in a non-academic position if appointed by a school employer or by the Trustees of the California State University because the retiree has skills needed in performing specialized work, of limited duration, which cannot exceed 960 hours in any fiscal year (Government Code section 21229).

6. Appointive Positions*

- a) The Governor, director of a state department, Speaker of the Assembly, the President pro Tempore of the Senate or the governing board of a contracting agency, may appoint any retired member to serve as a member of any salaried or non-salaried board, commission or advisory committee (Government Code section 21221(a)).

- b) The governing body of a contracting agency may appoint a retired person as an appointive member of the governing body; compensation for that office cannot exceed \$100.00 per month (Government Code section 21221(e)).

- c) The Legislature, or either house, or a legislative committee may appoint any retired person to a position deemed by the appointing power to be temporary in nature (Government Code section 21221(f)).

- d) The governing body of a contracting agency may appoint a retired person to a position deemed by the governing body to be of limited duration and requiring specialized skills. The appointment shall be only to fill a temporary vacancy until a permanent appointment can be made by the governing body (Government Code section 21221(g)).

7. Elective Positions*

Any retired person may serve as an elective officer without reinstatement from retirement provided that any part of the retirement allowance based on previous service in that same elected office shall be suspended during incumbency in such office (Government Code sections 21221(d), 21222).

*Remember: No employee or employer contributions are made to CalPERS for this type of employment.

EMPLOYMENT OF RETIRED SCHOOL TEACHERS BY SCHOOL DISTRICT

School districts considering employment of retired school teachers should refer to sections 45134, 45135, 59007, 59113, 88033, and 88034 of the Education Code concerning the restrictions of such employment.

EMPLOYMENT OF A RETIREE

EMPLOYMENT BY A NON-PUBLIC EMPLOYEES' RETIREMENT SYSTEM EMPLOYER

A retired person receiving a monthly allowance from this System may be employed by any employer not participating with this System without being reinstated from retirement. A disability retirement pension (except in the case of Industrial Disability Retirement) may be subject to reduction during such employment, depending upon the salary of the new position, until the retired person attains the minimum age for voluntary service retirement applicable to members of his/her classification. It will be the responsibility of the retiree to report to CalPERS any salary earned with a non-CalPERS employer.

EMPLOYMENT OF A DISABILITY RETIREE IN A DIFFERENT MEMBER CLASSIFICATION

The Board may approve CalPERS reemployment without reinstatement for a member who is receiving a disability retirement allowance and who is offered a specific job in a position other than that from which he/she retired. Such employment cannot begin prior to the Board's approval (Government Code section 21228).

To request reemployment approval, the retiree must submit:

1. Written request for reemployment.
2. Letter of intent to hire from the prospective employer.
3. Current copy of the job duty description for the position.
4. Current report from the treating physician stating that the person was examined and found able to substantially perform the tasks of the position.

Upon approval of the reemployment, the retiree will be required to report monthly earnings to CalPERS, as the disability retirement pension is subject to an earnings limit for as long as the employment continues.

EMPLOYMENT OF AN "INDEPENDENT CONTRACTOR"

Although a true "contractual" arrangement is, by definition, not "employment," and thereby not subject to the restrictions listed in this section, CalPERS' experience is that the majority of such purported "contractual" arrangements turn out to be, upon examination, employer/employee relationships, which are subject to these restrictions.

CalPERS should review any contracts in advance of hiring, to determine the propriety of the employment. Refer such contracts to the Membership Review Unit, CalPERS Actuarial and Employer Services Division.

See discussion of "Independent Contractors" in the "Positions Excluded by Retirement Law" section of the Membership chapter for further information.

NO EXTENSION OF 960-HOUR PER YEAR EMPLOYMENT LIMIT FOR STATE RETIREES

Except as indicated in the "Exceptions to General Rule", all state retirees are limited to 960 hours of employment per year with a state agency.

Government Code section 21221(h) does provide for an extension of a CalPERS retiree's employment beyond 960 hours per year, however, this section does not apply to state retirees.

Questions regarding employment of a retiree should be directed to the Benefits Services Division at 1-800-352-2238.